



Australian Government



Australian
Charities and
Not-for-profits
Commission

20 December 2018

File ref: EXT2018/69

Minister Nigel Scullion
PO Box 6100
Senate Parliament House
Canberra ACT 2600

Dear Minister,

Thank you for your letter of 26 October 2018 concerning my policy on the signature block of my Commission correspondence.

Your letter, tabled in the Senate on 26 October 2018 reached me on 8 November 2018. Public comment had been made on the contents of your letter, prior to my receipt of your letter.

As I only became aware of your letter from said public comment, it was poor form on your behalf to not notify me of the contents of your letter at the same time as tabling the letter.

More troubling is that your letter contains numerous errors.

You believe that I expressed a concern that my officers should not include an acknowledgement of 'country' because of a risk to the impartiality of my Commission.

Your statement is wrong.

My staff are free to make a personal acknowledgement, some five out of 100 choose to do so.

I have not specified that my officers not include an acknowledgement of 'country'. I have asked that they use the personal pronoun, 'I acknowledge ...' as opposed to 'We acknowledge ...' thus preserving their desire to acknowledge 'country'.

In fact, the acknowledgement is, for the most part, an acknowledgement of elders, not simply country. I take elders to be people, people who may be 'responsible persons' on the board of charities registered with my Commission.

Responsible people do not come in categories. The law that I administer assumes that responsible persons of whatever background have the same obligations to their charity.



As to the perception of bias, there is no doubt whatsoever that acknowledging one group of people, and indeed listing some attributes that they may or may not hold, could be read as the Commission holding a favourable view of such persons.

Should a complaint of bias come before me and the acknowledgement of 'country' be of the form, 'We acknowledge ...', that is, that it represents the view of the Commission, I would be left without a defence.

However, and respecting an individual officer's desire to signal their support of elders, I have suggested a compromise that allows the officer to complete the acknowledgement but not leave the Commission in a position where it could be accused of bias.

An accusation of bias could be managed by having another officer handle the complaint, thus preserving the perception, and the reality, of neutrality on the part of the Commission.

I have tested the bias proposition with very senior legal sources, with Aboriginal friends, and with a CEO of an Aboriginal charity on my register. They each agree: the acknowledgement could clearly be perceived as demonstrating bias on the part of the Commission.

Such risk is not relieved by your opinion. As Commissioner, I carry the risk and responsibility of my signature block.

I would be happy to meet you and explain to you my role and responsibilities as Commissioner of the ACNC.

Yours sincerely,

The Hon Dr Gary Johns
Commissioner
Australian Charities and Not-for-profits Commission